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10 Attorneys for Plaintiff  
11 AMERIS BANK d/b/a BALBOA CAPITAL CORPORATION

12  
13 THE UNITED STATES DISTRICT COURT  
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
15

16 AMERIS BANK, a Georgia state-  
17 chartered banking corporation, doing  
business as BALBOA CAPITAL  
CORPORATION,

18 Plaintiff,

19 vs.

20 ESCP CORP., an Iowa corporation,

21 Defendants.  
22  
23  
24

Case No.:

**PLAINTIFF AMERIS BANK D/B/A/  
BALBOA CAPITAL'S  
COMPLAINT FOR:**

**1. BREACH OF EQUIPMENT  
FINANCING AGREEMENT NO.  
1**

**2. BREACH OF EQUIPMENT  
FINANCING AGREEMENT NO.  
2**

1 Plaintiff Ameris Bank, a Georgia state-chartered banking corporation doing  
 2 business as Balboa Capital Corporation (“Balboa” or “Plaintiff”), alleges as  
 3 follows:

#### 4 PARTIES AND JURISDICTION

5 1. Plaintiff Ameris Bank d/b/a Balboa Capital Corporation (“Balboa” or  
 6 “Plaintiff”) is, and at all times relevant to this action was, a Georgia state-chartered  
 7 banking corporation with Balboa Capital Corporation as one of its divisions, which  
 8 division has its principal place of business in the State of California, County of  
 9 Orange.

10 2. Defendant ESCP CORP. (“ESCP”) is, and at all times relevant to this  
 11 action was, an Iowa corporation with its principal place of business in the County  
 12 of Scott, State of Iowa.

13 3. Plaintiff is informed and believes, and thereon alleges, that all  
 14 Defendants, including any members or shareholders of any defendant entities, are  
 15 all located outside of California.

16 4. The obligations sued upon herein are commercial in nature and the  
 17 Complaint herein is not subject to the provisions of California Civil Code Sections  
 18 1801, *et seq.* (Unruh Retail Installment Sales Act) and/or California Civil Code  
 19 Sections 2981, *et seq.* (Rees-Levering Motor Vehicle Sales and Finance Act).

20 5. Pursuant to the Equipment Financing Agreement described herein  
 21 below, defendant ESCP agreed the document would be governed by the laws of the  
 22 State of California. In addition, the Equipment Financing Agreement provides, in  
 23 pertinent part, as follows:

24 **GENERAL.** ... This agreement **will be governed and**  
 25 **construed under the laws of the State of California**  
 26 without reference to its principle of conflicts of laws and is  
 27 deemed to have been made and performed in Orange  
 28 County, CA. **You submit to the exclusive and mandatory**  
**jurisdiction of CA** and agree that the CA state courts  
 and/or the United States District Court for the Central  
 District of California, Santa Ana division, will have  
 exclusive and mandatory jurisdiction over any action or

proceeding to enforce this agreement or any action or proceeding arising out of this agreement.

6. Jurisdiction. This Court has jurisdiction over the case pursuant to 28 U.S.C. §1332(a).

7. Venue. This case is properly venued in this judicial district pursuant to 28 U.S.C. §1391(b)(2) and in the Southern Division pursuant to 28 U.S.C. §84(c)(3).

### **FIRST CAUSE OF ACTION**

#### **(Breach of Equipment Financing Agreement No. 1)**

#### **(Against ESCP)**

8. Balboa alleges and incorporates by reference each and every allegation contained above, inclusive, as though each were fully set forth here.

9. Prior to August 2020, Balboa is informed and believes that ESCP initiated and engaged with Praxair Distribution, Inc. located at 903 2nd Ave Rock Island, IL 61201 (“Equipment Vendor No. 1”), in order to coordinate the acquisition and financing of certain equipment (hereinafter referred to as “Collateral No. 1”) for its business. Equipment Vendor No. 1 worked with ESCP in the selection of Collateral No. 1 and in coordinating its delivery.

10. Thereafter, Balboa is informed and believes, and therefore alleges, that Equipment Vendor No. 1 initiated and coordinated submission of Defendant’s electronic credit application to Balboa and other financial institutions. Upon review, ESCP concluded that Balboa offered agreeable terms to finance Collateral No. 1 commensurate with its requirements. Thereafter, Equipment Vendor No. 1 accumulated and submitted to Balboa the requisite signatories, documentation and financial information from the Defendant to finance Collateral No. 1 being supplied by Equipment Vendor No. 1.

11. On or about August 3, 2020, ESCP executed a certain written Equipment Financing Agreement No. 332195-000 (“EFA No. 1”), under the terms

1 of which Balboa loaned to ESCP the principal sum of Sixty-Nine Thousand Five  
 2 Hundred Sixty-Four Dollars and Seventy Cents (\$69,564.70) in order to finance  
 3 Collateral No. 1 for its business. EFA No. 1 required ESCP to make sixty (60)  
 4 monthly payments of \$1,618.65, payable on the 22nd day of each month beginning  
 5 October 22, 2020. A true and correct copy of EFA No. 1 is attached as **Exhibit A**  
 6 and is incorporated here by reference.

7 12. The terms of EFA No. 1 incorporate by reference the terms of the  
 8 Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments  
 9 (ACH Debit) (the “AA”). Pursuant to the AA, ESCP agreed to enroll in the  
 10 Automatic Payment Plan and authorized Balboa to collect payments required under  
 11 the terms of EFA No. 1 from a checking account designated by ESCP. ESCP  
 12 provided the bank account information, which made it possible for Balboa to  
 13 electronically debit payments under EFA No. 1. The terms of Balboa’s Automatic  
 14 Payment Plan included in the AA provide, in pertinent part, as follows:

15 **AUTHORIZATION FOR ACH PAYMENTS:** Debtor  
 16 authorizes Creditor, Creditor’s successors and assigns to  
 17 automatically initiate and make debit entry charges to  
 18 Debtor’s bank account indicated below, or the account  
 19 from which the Debtor paid any deposit or fee in  
 20 conjunction with the execution of this Agreement, or any  
 21 account from which Debtor paid any obligation under this  
 22 Agreement, or the account from which a cancelled or  
 voided check provided by the Debtor can be drawn, for the  
 payment of all amounts owed by Debtor from time to time  
 under this Agreement. This authorization is to remain in  
 effect during the term of this Agreement. Any incorrect  
 charge will be corrected upon notification to Creditor, by  
 either a credit or debit to Debtor’s account.

23 A true and correct copy of the Authorization Agreement for Direct Deposit  
 24 (ACH Credit) and Direct Payments (ACH Debit) signed by Jeff Moore, the CEO of  
 25 ESCP, is attached hereto as **Exhibit A (Page 1)** and incorporated herein by  
 26 reference.

27 13. The last payment received by Balboa was credited toward the monthly  
 28 payment due for November 22, 2023. Therefore, on or about December 22, 2023,

1 ESCP breached EFA No. 1 by failing to make the monthly payment due on that  
2 date. Defendant ESCP's failure to make timely payments is a default under the  
3 terms of EFA No. 1.

4 14. In accordance with EFA No. 1, and as a proximate result of ESCP's  
5 default thereunder, Balboa declared the entire balance of the payments under EFA  
6 No. 1 to be immediately due and payable to Balboa. Therefore, there became due  
7 the sum of \$37,228.95. These amounts are exclusive of interest, attorneys' fees and  
8 costs, no portion of which sum has been paid by ESCP.

9 15. In addition, the terms of EFA No. 1 provide that ESCP is liable to  
10 Balboa for late charges on all payments not made in a timely manner. As of the  
11 date of the filing of Balboa's Complaint, late charges in the sum of \$291.36 are  
12 now due and owing.

13 16. Balboa has performed all of the terms, conditions, and covenants  
14 required to be performed by it under the terms of EFA No. 1, except as excused or  
15 prevented by the conduct of ESCP.

16 17. As a proximate result of ESCP's breach of the EFA No. 1, Balboa has  
17 been damaged in the total sum of \$37,520.31, plus prejudgment interest from  
18 December 22, 2023, until the entry of judgment herein.

19 18. Further, under the terms of EFA No. 1, ESCP promised to pay all  
20 costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement  
21 of EFA No. 1. Therefore, Balboa requests the Court award Balboa its reasonable  
22 attorneys' fees and costs as against ESCP.

23 19. EFA No. 1 also provides Balboa the remedy of possession of  
24 Collateral No. 1 and to obtain an order that Balboa may, in accordance with  
25 applicable state law, sell the remaining Collateral No. 1 and apply the net proceeds  
26 from the sale to the remaining loan balance. Alternatively, if possession cannot be  
27 had, Balboa is entitled to recover the value of Collateral No. 1.

28

**SECOND CAUSE OF ACTION**

**(Breach of Equipment Financing Agreement No. 2)**

**(Against ESCP)**

20. Balboa alleges and incorporates by reference each and every allegation contained above, inclusive, as though each were fully set forth here.

21. Prior to January 2021, Balboa is informed and believes that ESCP initiated and engaged with Cosen International Inc. located at 11626B Wilmar Blvd. Charlotte, NC 28273 (“Equipment Vendor No. 2”), in order to coordinate the acquisition and financing of certain equipment (hereinafter referred to as “Collateral No. 2”) for its business. Equipment Vendor No. 2 worked with ESCP in the selection of Collateral No. 2 and in coordinating its delivery.

22. Thereafter, Balboa is informed and believes, and therefore alleges, that Equipment Vendor No. 2 initiated and coordinated submission of Defendant’s electronic credit application to Balboa and other financial institutions. Upon review, ESCP concluded that Balboa offered agreeable terms to finance Collateral No. 2 commensurate with its requirements. Thereafter, Equipment Vendor No. 2 accumulated and submitted to Balboa the requisite signatories, documentation and financial information from the Defendant to finance Collateral No. 2 being supplied by Equipment Vendor No. 2.

23. On or about January 11, 2021, ESCP executed a certain written Equipment Financing Agreement No. 332195-001 (“EFA No. 2”), under the terms of which Balboa loaned to ESCP the principal sum of One Hundred Fifteen Thousand Seven Hundred Eighty Dollars and Twenty-Nine Cents (\$115,780.29) in order to finance Collateral No. 2 for its business. EFA No. 2 required ESCP to make sixty (60) monthly payments of \$2,720.40, payable on the 13th day of each month beginning March 13, 2021. A true and correct copy of EFA No. 2 is attached as **Exhibit B** and is incorporated here by reference.

24. The terms of EFA No. 2 incorporate by reference the terms of the Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debit) (the “AA”). Pursuant to the AA, ESCP agreed to enroll in the Automatic Payment Plan and authorized Balboa to collect payments required under the terms of EFA No. 2 from a checking account designated by ESCP. ESCP provided the bank account information, which made it possible for Balboa to electronically debit payments under EFA No. 2. The terms of Balboa’s Automatic Payment Plan included in the AA provide, in pertinent part, as follows:

**AUTHORIZATION FOR ACH PAYMENTS:** Debtor authorizes Creditor, Creditor’s successors and assigns to automatically initiate and make debit entry charges to Debtor’s bank account indicated below, or the account from which the Debtor paid any deposit or fee in conjunction with the execution of this Agreement, or any account from which Debtor paid any obligation under this Agreement, or the account from which a cancelled or voided check provided by the Debtor can be drawn, for the payment of all amounts owed by Debtor from time to time under this Agreement. This authorization is to remain in effect during the term of this Agreement. Any incorrect charge will be corrected upon notification to Creditor, by either a credit or debit to Debtor’s account.

A true and correct copy of the Authorization Agreement for Direct Deposit (ACH Credit) and Direct Payments (ACH Debit) signed by Jeff Moore, the CEO of ESCP, is attached hereto as **Exhibit B (Page 1)** and incorporated herein by reference.

25. The last payment received by Balboa was credited toward the monthly payment due for November 13, 2023. Therefore, on or about December 13, 2023, ESCP breached EFA No. 2 by failing to make the monthly payment due on that date. Defendant ESCP’s failure to make timely payments is a default under the terms of EFA No. 2.

26. In accordance with EFA No. 2, and as a proximate result of ESCP’s default thereunder, Balboa declared the entire balance of the payments under EFA No. 2 to be immediately due and payable to Balboa. Therefore, there became due



1 the sum of \$70,730.40. These amounts are exclusive of interest, attorneys' fees and  
2 costs, no portion of which sum has been paid by ESCP.

3 27. In addition, the terms of EFA No. 2 provide that ESCP is liable to  
4 Balboa for late charges on all payments not made in a timely manner. As of the  
5 date of the filing of Balboa's Complaint, late charges in the sum of \$979.34 are  
6 now due and owing.

7 28. Balboa has performed all of the terms, conditions, and covenants  
8 required to be performed by it under the terms of EFA No. 2, except as excused or  
9 prevented by the conduct of ESCP.

10 29. As a proximate result of ESCP's breach of EFA No. 2, Balboa has  
11 been damaged in the total sum of \$71,709.74, plus prejudgment interest from  
12 December 13, 2023, until the entry of judgment herein.

13 30. Further, under the terms of EFA No. 2, ESCP promised to pay all  
14 costs, including reasonable attorneys' fees, incurred by Balboa in the enforcement  
15 of EFA No. 2. Therefore, Balboa requests the Court award Balboa its reasonable  
16 attorneys' fees and costs as against ESCP.

17 31. EFA No. 2 also provides Balboa the remedy of possession of  
18 Collateral No. 2 and to obtain an order that Balboa may, in accordance with  
19 applicable state law, sell the remaining Collateral No. 2 and apply the net proceeds  
20 from the sale to the remaining loan balance. Alternatively, if possession cannot be  
21 had, Balboa is entitled to recover the value of Collateral No. 2.

### 22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff Balboa prays for judgment against Defendants, and  
24 each of them, as follows:

#### 25 **On the First Cause of Action:**

- 26 1. The principal sum \$37,520.31;
- 27 2. Prejudgment interest from December 22, 2023 to the date of entry of  
28 judgment;



3. Late charges and non-sufficient charges in an amount to be proven at trial;

4. An order to recover possession of Collateral No. 1 which is the subject of EFA No. 1, or if Collateral No. 1 cannot be delivered, for its reasonable value according to proof;

5. Reasonable attorneys' fees and costs;

6. Costs of suit as provided by law;

**On the Second Cause of Action:**

1. The principal sum \$71,709.74;

2. Prejudgment interest from December 13, 2023 to the date of entry of judgment;

3. Late charges and non-sufficient charges in an amount to be proven at trial;

4. An order to recover possession of Collateral No. 2 which is the subject of EFA No. 2, or if Collateral No. 2 cannot be delivered, for its reasonable value according to proof;

5. Reasonable attorneys' fees and costs;

6. Costs of suit as provided by law; and

7. Such other and further relief that the Court considers proper.

DATED: January 16, 2023

SALISIAN | LEE LLP

By: 

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Glenn Coffman

Jared T. Densen

Attorneys for Plaintiff  
AMERIS BANK d/b/a BALBOA CAPITAL  
CORPORATION